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U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENT
AFFAIRS
UNITED STATES SENATE

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Madam Chairwoman and members of the Committee, I am Thomas Dunne, Deputy Assistant Administrator of the Office of Solid Waste and Emergency Response (OSWER), U.S. Environmental Protection Agency (EPA). I am pleased to be here to discuss EPA's Emergency Response Program and the issue of chemical site security.

INTRODUCTION

EPA's Office of Solid Waste and Emergency Response manages EPA's response to environmental emergencies, EPA's national planning and preparedness functions, as well as development and implementation of Federal regulations to prevent hazardous chemical accidents and oil spills. In carrying out our emergency response functions, we work closely with EPA's 10 regional offices, our Federal agency partners, and state and local authorities to respond to major environmental emergencies and to conduct emergency removal actions at oil spill and hazardous waste sites. In this capacity, we respond to several hundred major oil spills and hazardous chemical releases each year. EPA has more than 200 highly trained Federal response officials, known as On Scene Coordinators (OSCs), stationed throughout the country, who are ready to quickly respond to release reports. We have two specialized Environmental Response Teams and a Radiological Emergency Response Team available at all times. We are also in the process of staffing a new National Decontamination Team - a cadre of highly specialized and experienced emergency responders, engineers and scientists dedicated to providing immediate technical decontamination expertise at the scene of a chemical, biological, or radiological attack. The events EPA responds to cover a wide range of emergencies, including the anthrax attacks that affected Senate office buildings, the collapse of the World Trade Center in New York City, a multi-state effort to recover every surviving piece of the Space Shuttle Columbia, and many others. In addition to managing our field emergency response functions, EPA has also partnered with the Department of Homeland Security and other Federal agencies in development and implementation of the National Response Plan (NRP), the National Incident Management System (NIMS), and the National Infrastructure Protection Plan (NIPP) and to carry out EPA's responsibilities under those plans. The NRP and NIMS align the old national response system into a more cohesive structure that integrates the incident management and emergency response capabilities and resources of Federal, State, and local governments into a national framework for domestic incident management. The NIPP provides a risk management framework for the coordinated protection of our critical infrastructure and key resources. Lastly, we are responsible for development and implementation of Federal regulations for

hazardous chemical inventory reporting under the Emergency Planning and Community Right-to-Know Act (EPCRA), emergency release reporting requirements contained in the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), oil spill prevention and response planning requirements under the Oil Pollution Act (OPA), and chemical accident prevention and mitigation under the Clean Air Act (CAA).

EPCRA AND THE CAA RISK MANAGEMENT PROGRAM

Congress passed both EPCRA and CAA section 112(r), establishing the chemical accident prevention program, in response to the December 1984 toxic chemical disaster in Bhopal, India, and subsequent chemical accidents that occurred in the United States in the mid to late 1980s. EPCRA calls on U.S. states to create State Emergency Response Commissions (SERCs) and local communities to form Local Emergency Planning Committees (LEPCs) to prepare local emergency response plans for chemical accidents. EPCRA also requires chemical facilities to provide LEPCs with information necessary for emergency planning, and to submit annual chemical inventory reports and information about the facility's hazardous chemicals to SERCs, LEPCs and local fire departments. As its name suggests, EPCRA promotes hazard information sharing and emergency planning. However, EPCRA does not require facilities to take actions to prevent chemical accidents from occurring. Major chemical accidents continued to occur in the U.S. throughout the late 1980s, and in 1990 Congress added section 112(r) to the Clean Air Act (CAA) to address the problem. CAA section 112(r) imposes a "general duty" on all stationary facilities handling extremely hazardous chemicals to prevent and mitigate accidental releases of those chemicals into the air. It also directs EPA to promulgate risk management requirements for the subset of facilities having large quantities of the most dangerous chemicals. In accordance with Congress' direction, EPA listed 140 chemicals and threshold quantities, based on potential harm to human health and the environment in the event of an air release. Facilities having a listed chemical present in more than a threshold quantity must conduct a hazard assessment, develop and implement an accident prevention and emergency response program, analyze the potential consequences of worst-case and alternative (less severe) release scenarios, and provide a summary report - called a Risk Management Plan, or RMP - to EPA. Approximately 15,000 chemical facilities are subject to RMP requirements. RMPs contain valuable information about a chemical facility and its hazards. In addition to providing the address and physical location of the facility, RMPs report the identity and quantity of each regulated chemical on site, information about the measures taken by the facility to prevent accidental releases, facility emergency planning information, the history of significant accidents at the facility over the last five years, and the facility's Offsite Consequence Analysis (OCA) information, which provides the facility's analytical estimate of the potential consequences of hypothetical worst-case and alternative release scenarios. EPA maintains a national electronic database of RMPs, known as RMP*Info, which is currently the most comprehensive database of chemical facility hazard information in existence. Both EPCRA and CAA section 112 (r) contribute to facility safety and emergency preparedness to reduce the vulnerability of facilities and their communities to terrorist attacks. EPCRA's reporting requirements ensure that communities are made aware of hazardous chemicals located in their area,

and SERCs and LEPCs established under the law help prepare communities to respond to any catastrophic releases of those chemicals. The CAA requirement for facilities to assess and address their chemical hazards reduces the risk that any unanticipated release will seriously threaten public health and the environment. The CAA requirement that facilities have emergency response plans in place also helps lessen the potential consequences of any unanticipated release, however caused. In addition, the national RMP database created under the CAA has proven to be one of the Federal government's most important sources of information on the risks associated with U.S. hazardous chemical facilities. Following September 11 terrorist attacks, the President initially assigned EPA with the responsibility for addressing the security of the chemical and drinking water sectors. In that capacity, EPA considered whether it had authority under CAA section 112(r) to require facilities handling extremely hazardous substances to secure themselves against terrorist attack. The CAA section 112(r) requirements apply to "accidental releases" of extremely hazardous substances, and the Act defines "accidental releases" as "unanticipated releases" from stationary sources to ambient (or outdoor) air. While an argument could be made that concern for "unanticipated releases" might require some measures that would diminish the effect of a terrorist attack, EPA concluded that a broad interpretation would be subject to significant legal vulnerability. It would be legally questionable to conclude that EPA's 112 (r) authority can be stretched to mandate that facilities install particular types of perimeter fencing, vehicle barriers, armed protection, cyber security, anti-sabotage or other security measures specifically designed to defeat intentional terrorist attacks. The Agency also recognized that even if the CAA were interpreted to reach terrorist-caused releases, it would not address all the ways in which a terrorist might attempt to use a chemical facility to harm the public. Because the CAA definition of "accidental releases" is limited to outdoor air releases from stationary sources, a CAA chemical security program could not reach releases to water, land or indoor air, or theft of chemicals from facilities for release elsewhere. In light of these legal and policy concerns, EPA decided against interpreting the CAA to require facilities subject to section 112(r) to protect them against terrorist attack.

FEDERAL CHEMICAL SITE SECURITY LEGISLATION

Two U.S. laws enacted since September 11, 2001 mandate security requirements for some categories of chemical facilities. The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 requires larger community water utilities (many of which use large quantities of hazardous chemicals such as chlorine and ammonia) to conduct security vulnerability assessments, implement emergency preparedness and response plans, and submit the vulnerability assessments to EPA. The Bioterrorism Act does not require that utilities make specific security-related improvements. However, EPA does have authority under section 1431 of the Safe Drinking Water Act to require a water system, or any person, to take any action necessary to address an imminent and substantial endangerment to public health as a result of potential or threatened contamination of public water systems. Such actions might include requiring a utility or a group of utilities to enhance security in response to certain threats to the water supply. The Bioterrorism Act also requires EPA to study methods to prevent, detect, and respond to terrorist threats to the safety and security of water distribution systems and

infrastructure. A second new law, the Maritime Transportation Security Act (MTSA), requires ports, vessels, and port facilities to conduct vulnerability assessments, develop transportation security plans, and develop security incident response plans. For chemical facilities located within a port, this law requires specific security measures.

PRIVATE SECTOR EFFORTS

Since September 11, 2001, many hazardous chemical facilities have already made significant investments in traditional physical security measures such as perimeter fences and lighting, security guards, access controls and the like, as well as measures to improve operational security, employee screening, and security of electronic systems. For example, shortly after 9/11, one of the first steps taken by the American Chemistry Council was to add a new Security Code to the existing Responsible Care program, and issue site security guidelines for the U.S. chemical industry. The new Security Code requires ACC member companies to conduct a security vulnerability assessment, implement security enhancements, and independently verify those enhancements using a third-party audit. Other trade associations representing industries that manufacture or use hazardous chemicals have also implemented non-regulatory programs to enhance security. Some facilities have also taken steps to reduce their level of inherent risk by employing safer production technologies or substituting less hazardous chemicals for highly toxic chemicals.

COORDINATION WITH DHS

After the creation of the Department of Homeland Security (DHS), Homeland Security Presidential Directive 7 made DHS the lead agency for interacting with the chemical industry and the hazardous materials sector on infrastructure protection issues in the chemical sector. At that time, EPA and DHS effected a transition of ongoing Federal chemical security efforts to DHS in a series of meetings between the two agencies. DHS is currently the lead Federal agency for chemical sector security, and EPA serves in a supporting role by providing information and analytical support as requested.

CONCLUSION

In closing, the Federal government and the chemical sector have made significant progress in improving the security of facilities handling extremely hazardous substances. At the same time, only a fraction of U.S. hazardous chemical facilities are currently subject to Federal security requirements under the Bioterrorism Act or the MTSA. While organizations such as the American Chemistry Council should be recognized for their important voluntary efforts, we cannot be sure that every high-risk chemical facility has taken voluntary action to secure itself against terrorism. As DHS continues its efforts to address chemical site security issues, EPA stands ready to support them in those initiatives.